



TOWN OF WENHAM

By-Laws

2015

By-Laws of the Town of Wenham

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CHAPTER I TOWN MEETINGS

SECTION 1

Five percent of the registered voters on the voting list at the time of an annual town meeting shall constitute a quorum for such annual meeting, and two percent of the registered voters on the voting list at the time of the annual town meeting shall constitute a quorum for all special town meetings prior to the next annual town meeting, provided that a number less than a quorum may from time to time adjourn the same. This section shall not apply to such parts of meetings as are devoted to the election of town officers. (Amended 5/12/83)

SECTION 2

The annual town meeting shall be held on the first Saturday in May or April of each year unless the Selectmen vote on or before December 31 of the preceding year to establish another date in order to suit the public convenience for the reasons the Selectmen shall determine including, but not limited to, conflicts with the observance of holidays. (Amended STM vote 11/8/2011. Approved by the AG 12/7/2011. Effective as of 2013)

SECTION 3

A motion to reconsider or to rescind a previous vote of the meeting may be made only for such compelling reasons as a change of circumstances, or the acquisition of new information since the original vote was taken, and may be made only on the same day as the original vote. (Amended 5/7/77)

SECTION 4

A motion to change the order of consideration of articles from that set forth in the Warrant shall be in order only when a change of circumstances, error, or discovery of new information has occurred since the posting of the Warrant that bears directly upon the purpose or effect of the article to be postponed or advanced, and may not be adopted solely to affect the time of voting on an article.

SECTION 5

In the case of action on a matter which by statute requires a two-thirds vote, the Town vote may be declared by the Moderator without taking and recording a count, as provided in M.G. Laws Chapter 39, Section 15, unless the vote so declared is immediately questioned by seven (7) or more voters. (Amended 10/5/2005)

(Please note that the STM on 11/8/2011 the following was approved; Town meeting warrant posting requirements were changed from the key intersections throughout town to the following prominent public facilities: Town Hall, Library, Senior Center, the bulletin board outside the post office and on the town website.)

CHAPTER II LEGAL AFFAIRS

The Board of Selectmen shall have authority to prosecute, defend and comprise all litigation to which the town is a party, and to employ counsel whenever, in their judgment, necessity therefor arises.

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Holiday Leave - All permanent full-time employees of the town shall receive eleven (11) paid holidays in each year; namely, January 1, Washington's Birthday, Martin Luther King Day, Patriots' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day. All employees whose duties require working on one of these holidays shall receive another day off with pay. (Amended 5/3/75)

Personnel Policies - The Board of Selectmen shall have authority to establish Personnel Policies for employees of the town. A public hearing, notice of which is to be published at least seven (7) days prior to the hearing in a newspaper of general circulation in the town, shall be held prior to the adoption or change of any Personnel Policy. For purposes of this bylaw, Personnel Policies may include any conditions of employment not otherwise governed by state or federal law. (Amended 5/9/81)

The executive powers of the town of Wenham shall be vested in a three-member board of selectmen elected for three year rotating terms. Such board shall serve as the chief executive officer and policymaking entity of the town. The board of selectmen shall continue to have and be able to exercise all the powers and duties vested in boards of selectmen under the General Laws or by vote of the Town, and such other authority as specified herein, including, but not limited to:

- Adopting policies of general application to elected and appointed multiple member bodies, officers and employees of the town, **to the extent allowed by law**, and enacting rules and regulations implementing the same;
- Instituting, prosecuting, compromising or defending any claim, action, suit or other proceeding in the name of the Town and authority to settle any claim, action, suit or other proceeding brought by or on behalf or against the Town;
- Appointing ad-hoc policy committees to study particular issues or provide the board with advice;
- Acting as the licensing authority of the town;
- Calling town meetings and elections and issuing warrants therefor;
- Appointing a town administrator to assist the board in carrying out its duties and responsibilities under state law or this act, establishing the duties and responsibilities of said office, and entering in an employment contract with said officer;
- Investigating the affairs of the town and the conduct of any department, office or agency thereof;
- Executing collective bargaining agreements and other contracts of the town; and
- Such other matters as may be provided for by bylaw or other vote of town meeting.

Provided, however, that it is the intention of this bylaw that the board of selectmen shall not act to derogate from the statutory authority of **multiple-member bodies and other** appointees of the Board and departments under its responsibility, and, **to the extent allowed by law, other multiple-member bodies**, officers and employees of the town. (Amended BY ATM vote 4/11/2015 Article 16, Approved by the Attorney General 8/18/2015)

CHAPTER III FINANCE AND ADVISORY COMMITTEE

SECTION 1

There shall be a Finance and Advisory Committee consisting of **FIVE** legal voters of the town, and no elected

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or appointed town officer or employee shall be eligible to serve on said Committee. (Amended BY ATM vote 4/11/2015 Article 17)

SECTION 2

The Finance and Advisory Committee shall be chosen by an appointing committee consisting of the Moderator, the Chairman of the Board of Selectmen, and the Chairman of the Finance and Advisory Committee as provided in Section 3.

On July 1 of each fiscal year, such appointing committee or a majority of them, shall appoint **one or** two members of the Finance and Advisory Committee for terms expiring on June 30 of the third succeeding fiscal year as may be needed to bring the total number of members to five. Any member who is appointed and serves for a second consecutive full three-year term shall be ineligible for reappointment until after the next succeeding annual town meeting. (Amended 5/2/98)

Whenever a vacancy occurs in the membership of the Finance and Advisory Committee, such vacancy shall be filled by the appointing committee for the balance of the unexpired term. If any member of the Finance and Advisory Committee becomes an elected or appointed town officer or employee, or is absent from five successive meetings, except in case of illness, his position shall be deemed to be vacant.

(Amended BY ATM vote 4/11/2015 Article 17, Approved by the Attorney General 8/18/2015)

SECTION 3

The Finance and Advisory Committee shall meet for the purpose of organization as soon as possible after the annual appointment of its new members, and shall elect from its membership a chairman and a secretary who shall hold office until their successors are elected. Thereafter they shall meet from time to time at the call of the chairman or any two members thereof. Said Committee shall cause to be kept a true record of its proceedings. The chairman shall be a member of the appointing committee during his term of office as chairman and thereafter until a succeeding chairman is elected. (As amended 5/2/98)

SECTION 4

The Finance and Advisory Committee shall consider all articles and warrants for town meetings involving an appropriation or expenditure of money or the disposition of any property of the town. The Committee shall hold prior to each annual town meeting one or more meetings at which the Selectmen and other invited officers, boards and committees of the town shall be present to consider the items which make up the annual budget and any other municipal matters. In discharge of its duty, said Committee shall have free access to all books of record and accounts, bills and vouchers on which money has been or may be paid from the town treasury. Officers, boards and committees of the town shall furnish said Committee upon request with facts, figures and any other information pertaining to their several activities.

The recommendations of the Committee on the articles in the warrant for the annual town meeting shall be printed in the annual town report, which shall be distributed, if possible, one week before the date of said meeting.

(The failure, for any reason, of the Committee to make such recommendations shall not affect the legality of any action taken at any meeting.) (As amended 3/7/59)

CHAPTER IV FINANCIAL AFFAIRS

SECTION 1

There shall be an annual audit of the town's accounts under the supervision of the Director of Accounts of the

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Department of Corporations and Taxation in accordance with the provisions of Section 35, Chapter 44, General Laws.

SECTION 2

The Collector of Taxes shall collect, under the title of "Town Collector," all accounts due the town, in accordance with the provisions of Section 38A, Chapter 41, General Laws.

SECTION 3

All town officers shall pay all fees received by them by virtue of their office into the town treasury, including, without limiting the generality of the foregoing, all fees received by the Town Clerk for sporting and trapping licenses as agent for the Massachusetts Department of Fisheries and Game, and all fees for issuing dog licenses as agent for the County of Essex. (As amended 3/17/62)

SECTION 4

Any board or officer in charge of a department of the town may, with the approval of the Board of Selectmen, sell any town property which is within the possession or control of the department, and which has become obsolete or is not required for further use by the department, or trade the same in part payment for replacements for which funds have been provided. (As amended 3/20/71)

SECTION 5

No contract in the amount of Ten Thousand Dollars (\$10,000) or more with a contractor employing six or more persons shall be entered into by the town directly or through any agency of the town unless the contractor certifies in writing to the Town that the contractor is in compliance with Chapter 151B of the General Laws, and sets forth affirmative action which the contractor provides for equal opportunities for all qualified persons without regard to age, sex, race, color, religion, or national origin. (Amended 3/20/71)

SECTION 6

The Selectmen shall appoint a Finance Director to serve as the chief financial officer of the Town, and to determine the duties and authority of the Finance Director, including cash management, borrowing, budget annual budget development, accounting policies and procedures for all town departments and officers. The positions of Treasurer, Collector, and Accountant shall report to the Finance Director, who may also serve as either the Treasurer or Accountant with the approval of the Selectmen. (Amended BY ATM vote 4/11/2015 Article 15 Approved by the Attorney General 8/18/2015)

CHAPTER V CERTAIN ACTS PROHIBITED

SECTION 1

No persons shall remain assembled on any sidewalk in front of any church, dwelling house, or other building so as to obstruct passage along the same, or to impede or annoy other persons.

SECTION 2

No person shall be a collector of, or a dealer in, junk, old metals or secondhand articles, or a keeper of a shop for the purchase, sale or barter of junk, old metals or secondhand articles unless licensed therefor by the Selectmen.

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SECTION 3

No person shall throw stones, snowballs, sticks or other missiles, kick a football, play at any game in which a ball is used, fly kites, shoot with or use an air-gun, bow and arrows, slingshots, or other similar devices, on or across any public ways of this town.

SECTION 4

Repealed by ATM vote 4/5/2014, Effective 9/16/2014)

SECTION 5

No person shall operate upon any street in the town a motor vehicle carrying bituminous coal, or other dust-emitting material, without covering said material in such a way as to prevent flying dust.

SECTION 6

No person shall maliciously throw or drop any paper, paper container or other refuse on any public way in this town.

SECTION 7

No person shall maliciously throw or drop any flaming, smoldering or burning, material from a vehicle of any kind on public ways in this town.

SECTION 8

No person shall fire or discharge any firearm within the limits of any park, playground or other public property except with the written consent of the Board of Selectmen, or hunt, trap, or fire or discharge any firearm on any private property except with the written consent of the owner, his authorized agent, or the legal occupant thereof.

This bylaw shall not apply to the lawful defense of life or property, or to any law enforcement officer acting in the discharge of his duties. (As amended 3/19/60)

SECTION 9

(a) Licenses Required. It shall be unlawful for any solicitor or canvasser as defined in this bylaw to engage in such business within the Town without first obtaining a license therefor in compliance with the provisions of this bylaw. The provisions of this bylaw shall not apply to any person exempted under Chapter 101 of the General Laws, or to any person duly licensed under Chapter 101 of the General Laws, or to any person exempted by any other General Law, nor shall this bylaw be construed to prevent route salesmen or other persons having established customers to whom they make periodic deliveries from calling upon such customers or from making calls upon prospective customers to solicit an order for future periodic route deliveries.

(b) Definition. A solicitor or canvasser is defined as any person who, for himself, or for another person, firm or corporation, travels by foot, automobile or any other type of conveyance from place to place, from house to house, or from street to street, taking or attempting to lease or take orders for retail sale of goods, wares, merchandise, or services, including without limiting, the selling, distributing, exposing for sale or soliciting orders for magazines, books, periodicals or other articles of a commercial nature, the contracting of all home improvements, or for services to be performed in the future whether or not such individual has, carries or exposes for retail sale a sample of the subject of such sale or whether he is collecting advance payment on such retail sales. For the purpose of this act, persons engaged in

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the pursuit of soliciting for charitable benevolent, fraternal, religious or political activities shall be exempt from the licensing requirements as set forth.

(c) Application. Applicants for a license shall file with the Chief of Police, on a form issued by the Police Department, a written application signed under the penalties of perjury, containing the following information:

- 1) Name of applicant.
- 2) Address of applicant (local and permanent home address).
- 3) Applicant's height, weight, eye and hair color.
- 4) Applicant's social security number.
- 5) The length of time for which the right to do business is desired.
- 6) A brief description of the nature of the business and the goods to be sold.
- 7) The name and home office address of the applicant's employer. If self-employed, it shall so state.
- 8) A photograph of the applicant, which picture shall be submitted by the applicant and be 2" x 2" showing the head and shoulders of the applicant in a clear and distinguishing manner.
- 9) If operating a motor vehicle: the year, make, model, motor number registration number, state of registration, vehicle's owner and address.

10) The finger prints of all persons participating in the solicitations. (Amended BY ATM vote 4/11/2015 Article 20, Approved by the Attorney General 8/18/2015)

At the time filing the application, each applicant shall pay a fee of twenty dollars (\$20.00) (Amended BY ATM vote 4/11/2015 Article 20, Approved by the Attorney General 8/18/2015)

(d) Investigation and Issuance.

- 1) Upon receipt of the application, the Chief of Police shall investigate the applicant's reputation as to morals and integrity.
- 2) After an investigation of the applicant's morals and integrity, but within seven business days of the filing of the applicant, the Chief of Police shall endorse on such application his approval or disapproval. Failure of the Police Chief to act on said permit within seven business days of the applicant's filing shall constitute approval. If disapproved, the applicant shall have the right of appeal to the Board of Selectmen in writing within seven days of the denial by the Chief of Police. The Board of Selectmen must act upon the appeal at one of their next two regularly scheduled meetings. Failure to so act shall be deemed approval.
- 3) Such license when issued shall contain the signature of the Chief of Police or the Board of Selectmen and shall show the name, address, and photograph of said licensee, the date of issuance and length of time the same shall be operative, as well as the license number. The Police Department shall keep a record of all licenses issued for a period of six (6) years. Solicitors and canvassers when engaged in the business of soliciting or canvassing are required to display an identifying badge issued by the Police Department, by wearing said badge on an outer garment. Each licensee is required to possess an individual license.

(e) Duty of Police to Enforce - Transfer. The police officers of the Town shall enforce this bylaw. No license shall be transferred.

(f) Revocation of License. The Chief of Police is hereby vested with jurisdiction over the revoking of licenses. Any person aggrieved by revocation may appeal to the Board of Selectmen within seven business days, and a hearing will be scheduled for one of the next two regularly scheduled meetings of the Board of Selectmen.

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- (g) Expiration of License. Each license issued under the provisions of this bylaw shall continue in force from the date of its issue until the thirty-first day of December following, unless sooner revoked.
- (h) Renewal of License. A license issued under the provisions of this bylaw may be renewed by the Chief of Police. An applicant requesting a renewal of a license must apply in person for such license renewal, and provide such information as is required to obtain an initial license.
- (i) Misrepresentation.
- 1) No solicitor or canvasser, licensed or exempted from license, may misrepresent, in any manner, the buyer's right to cancel as stipulated by Chapters 93, 93A and 255D of the General Laws.
 - 2) No solicitor or canvasser, licensed or exempted from license, may use any plan, scheme or ruse which misrepresents the true status or mission of the person making the call in order to gain admission to a prospective buyer's home, office, or other establishment with the purpose of making a sale of consumer goods or services.
- (j) Trespassing. It shall be unlawful for any canvasser or solicitor to enter the premises of a resident or business who has displayed a "no trespassing" or "no soliciting" sign or poster. Further, it shall be unlawful for canvassers or solicitors to ignore a resident or businessperson's no solicitation directive or remain on private property after its owner has indicated that the canvasser or solicitor is not welcome.
- (k) Penalty. Any person violating any provision of this bylaw shall, upon conviction therefore, be punished by a fine not to exceed fifty dollars (\$50) for each and every offense. (As amended 5/4/91)

SECTION 10

No person owning land on which there is situated a permanent artificial sunken swimming pool containing twenty-four inches or more in depth of water, at any point, shall fail to erect and maintain thereon an adequate enclosure surrounding either the property or the pool area, sufficient to make such a body of water inaccessible to small children. Such enclosure, including gates therein, must be not less than four feet above the underlying ground; all gates must be self-latching with latches placed four feet above the underlying ground or otherwise made inaccessible from the outside to small children. A pool cover or other protective device approved by the Board of Selectmen may be used so long as the degree of protection afforded by the alternate devices or structures is not less than the protection offered by the enclosure, gate and latch described herein. (As amended 3/18/67)

SECTION 11

The Superintendent of Streets shall be authorized to remove or cause to be removed to a convenient public garage any vehicle interfering with the removal or plowing of snow or ice, and the cost of such removal or storage charges, if any, resulting therefrom shall be paid by the owner of the vehicle. (As amended 12/30/63)

Section 11

Any non-resident of Wenham who requests the Wenham Police Department to process finger prints for employment or other purposes not at the request of the Department shall pay a fee of \$20 to the Police Department for processing fingerprints under such circumstances.” (Amended BY ATM vote 4/11/2015 Article 21,)

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SECTION 12

No persons shall play, push or throw any snow or ice onto any street or sidewalk of the town unless it is immediately removed therefrom. (As amended 12/30/63)

SECTION 13

Unregistered Motor Vehicles

- (a) The keeping of more than one unregistered motor vehicle, assembled or disassembled, except by a person licensed under General Laws, Chapter 140, Section 59, on any premises shall not be permitted unless said vehicles are stored within an enclosed building.
- (b) A Special Permit to keep more than one unregistered motor vehicle on any premises not within an enclosed building after a duly called public hearing to which all abutters to the premises have received notice may be granted by the Board of Selectmen if it finds that such keeping:
- 1) Is in harmony with the general purposes and intent of this bylaw:
 - 2) Will not adversely affect the neighborhood, and
 - 3) Will not be a nuisance
- (c) All such special permits shall limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time.
- (d) This article shall not apply to motor vehicles which are designed for and used for farming purposes.
- (e) Whoever violates any provisions of this article of the bylaws shall be liable to a penalty of \$5.00 per day for each day of violation, commencing ten (10) days following the date of receipt of written notice of such violation from the Board of Selectmen. (As amended 3/21/70)

SECTION 14

Motor Vehicles, Snow Vehicles and Recreation Vehicles

No person shall use or operate a motor vehicle, trail bicycle, motor bicycle or similar motorized vehicle which is eligible for registration under Chapter 90B of the General Laws of the Commonwealth, or a snow vehicle or recreation vehicle as defined in Section 20 of said Chapter, in any park or other town-owned property except public roads and streets without the prior written consent of the Board of Selectmen, who shall first obtain consent of the town board having the responsibility for the management of such property. Any such consent shall be temporary in nature, shall specify the period of time during which it is in force and shall only be granted where the proposed use or operation will not, in the judgment of the boards granting the same, be detrimental to the purpose for which such property is owned. Notwithstanding anything to the contrary herein above contained, parking areas established for use in connection with such park or such other public property may be used for parking purposes without prior consent.

No person shall use or operate any such vehicle on or over any private property within the limits of the town without the written consent of the owner of such property.

No person shall operate a snow vehicle for other than an emergency between the hours of 8:00 P.M. and 8:00 A.M. (As amended 3/18/72)

SECTION 15

Unless granted a special permit by the Board of Selectmen, no person shall drink any alcoholic beverage, or have in his/her possession an open container of alcoholic beverage as defined in Massachusetts General Laws, Chapter 138, Section 1, upon any public way, public parking area, school property, town park or recreation area, on any way or property to which the public has a right of access as invitees or licensees, or upon any private property without the consent of the owner or his/her authorized representative. (As Amended 5/12/79)

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SECTION 16

No person shall use or operate a boat or other vessel powered by an internal combustion engine on Pleasant Pond. This Bylaw shall not apply to any emergency or life-saving operation carried out by or with the approval of the Police Department, Fire Department, Parks and Recreation Commission, or the Board of Selectmen.
(Amended 6/12/79)

CHAPTER VI MOTOR VEHICLE REGULATIONS

No person having charge of a motor vehicle in a public street shall refuse or neglect to stop the same as directed by a police officer.

CHAPTER VII CURFEW

No child under 16 years of age shall be, loiter, or remain upon any street, highway or place in this town after the hour of nine o'clock in the evening of any day, unless accompanied by or under the control or care of a parent, guardian or other adult person; or unless in some employment, or in the performance of some duty directed in writing by said parent, guardian or other adult person; and no such child, while in such employment or performance of such duty, shall loiter upon any such street, highway, park or other public way or place.

CHAPTER VIII PENALTIES

Any person who shall violate any of the provisions of Chapters V - VII inclusive of these Bylaws shall forfeit and pay, for each offense, a sum not exceeding one hundred dollars. (As amended 5/14/88)

CHAPTER IX PLANNING BOARD

SECTION 1

A Planning Board is hereby established under the provisions of General Laws (Ter. Ed.) Chapter 41, Section 81A (Acts of 1936, Chapter 211), to consist of five members, one member to be elected each year at the annual town meeting for a term of five years. The members shall serve without pay.

SECTION 2

At the first annual town meeting after the adoption of this bylaw, there shall be elected one member to serve for one year, one member to serve for two years, one member to serve for three years, one member to serve for four

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years, and one member to serve for five years.

SECTION 3

It shall be the duty of the Planning Board to study and make plans for the resources, possibilities, and needs of the town; to make a master plan as provided in Chapter 41, Section 81B of the General Laws, showing all existing and desirable features of the town; to extend and improve said master plan from time to time to suit the needs and desires of the town; to report annually to the town on the results of its studies, with any recommendations; to receive for approval, as provided in Chapter 41, Section 81F of the General Laws, plots of all subdivisions of land proposed in the town and to approve such plots as conform to the master plan; to examine plans of proposed streets or other municipal improvements and make recommendations regarding the same; and to report to the town on any item referred to it by the town for its opinion.

SECTION 4

The Planning Board shall prepare, or have prepared under its direction, a map of the town showing existing public ways and parks, and private ways used in common with two or more owners. Said map when prepared shall be submitted to the town meeting for adoption, and upon adoption shall become the official map of the town as provided in Section 81C of Chapter 41 of the General Laws.

SECTION 5

All articles in any warrant for a town meeting pertaining to the physical resources and features of the town shall be referred to the Planning Board for its consideration. The Selectmen, after drawing any such warrant, shall transmit immediately a copy thereof to each member of the Board. The Board shall, after due consideration, report thereon to the town meeting in writing such recommendations as it deems best for the interest of the town and its citizens.

SECTION 6

No street shall be proposed for acceptance at any town meeting unless such proposed action shall have been submitted to the Planning Board for its recommendation at least 60 days prior to the date of the meeting.

CHAPTER X BOARD OF APPEALS

SECTION 1

A Board of Appeals is hereby established with the powers and duties as stated in Sections 81 H and 81I of Chapter 41 of the General Laws. The Board shall consist of three members, one member to be appointed each year by the Selectmen for a term of three years, provided that when said members are first appointed, one shall be appointed to serve for one year, one for two years, and one for three years. There shall also be appointed one associate member for a two-year term. The associate member shall be designated by the Chairman of the Board to sit in place of any member incapacitated by personal interest or absence.

SECTION 2

The Board of Appeals shall adopt rules and regulations consistent with law for conducting its business and otherwise carrying out its purposes. (See Zoning Bylaws)

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CHAPTER XI REPEAL OF BYLAWS PASSED HERETOFORE

All bylaws heretofore adopted are hereby repealed.

(The foregoing is a true copy of the Bylaws accepted at the Annual Town Meeting of March 5, 1945, and approved by the Attorney General, Clarence A. Barnes, under date of April 4, 1945, and as amended at the Special Town Meeting held on May 11, 1955 and approved by Attorney General George Fingold, June 29, 1955.)

CHAPTER XII EARTH REMOVAL BYLAW

A. Purpose

The purpose of this bylaw is to promote the health, safety, welfare and amenities of the community or any neighborhood thereof, to prevent harmful results from improper excavation and to assure compliance with the Master Plan of the Town of Wenham.

B. General

1. This section is adopted under the authority of General Laws, Chapter 40, Section 21, Clause 17.
2. For the purposes of this bylaw, "earth" shall include soil, loam, sod, clay, sand and gravel or quarried stone, or any combination thereof.
3. The Board of Selectmen referred to in this bylaw shall be the same Board of Selectmen established under Section 1, Chapter 41 of the General Laws or the predecessor thereto.

C. Permits Required

1. Other than as excepted in this Section no earth shall be removed from any parcel of land not in public use, either above or under water, in the Town of Wenham unless by and in accordance with a permit issued under the authority of this bylaw. In order to preserve the natural resources of the Town of Wenham, the removal from the town of topsoil or sod is prohibited; relocation within the town of topsoil or sod from one parcel of land to another, within the town, is permitted by written permit as hereinafter set forth.
2. The annual removal of earth other than topsoil or sod in a quantity less than one hundred (100) cubic yards per year or the removal of topsoil or sod in a quantity of less than ten (10) cubic yards per year shall be exempt from the provisions of this bylaw.
3. The removal of earth in compliance with the requirements of a subdivision plan approved by the Planning Board is exempt from the provisions of this bylaw.
4. The grading and redistribution of earth on any site is governed by Section VII-B of the Zoning Bylaw of the Town of Wenham.

D. Permit Applications

Application for a permit hereunder shall be filed with the Board of Selectmen and the Town Clerk in such forms as the Board of Selectmen shall prescribe from time to time. In the event that no rules have been prescribed at the time of the application, within thirty (30) days of filing the application the Board of Selectmen may require

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the applicant to furnish such additional specified information as may be reasonably useful and further may also require a refiling within thirty (30) days of date of notice to applicant. The legal date of filing of application, for all purposes including those specified in section E, herein, shall be the date of last filing.

E. Permit Hearing

1. No permit shall be issued without a public hearing held within sixty-five (65) days of the filing of the application with the Town Clerk in conformity with provisions for special permits under Sections 9 and 11 of Chapter 40A, General Laws.
2. Failure of the Board of Selectmen to take final action within 90 days after the hearing shall be deemed approval of the requested permits, provided that such permits shall be valid only for six (6) months from the date of automatic approval, excluding the time required to pursue or await the determination of appeal, and further provided that all work shall be done in accordance with the standards for earth removal in subdivisions as stipulated in the Rules and Regulations governing subdivisions, of the Planning Board of the Town of Wenham.
3. Permits issued by vote of the Board shall automatically expire upon completion of the earth removal project for which it was issued or at such time as may be specified in said permit, and in any event within one (1) year from the date of issue thereof.
4. A permit may be renewed by the Board of Selectmen for a period of one (1) year without a hearing if it finds that all conditions then applicable have been complied with and that the work has been carried on continuously and in good faith. A permit may not be renewed more than once without a hearing, unless in the opinion of the Board of Selectmen the area of the previous permit is being satisfactorily restored for use in accordance with the reuse plan approved by said Board.
5. Where a permit is required hereunder in connection with the development of a large-scale ground-mounted solar photovoltaic installation pursuant to Section 10.2 of the Zoning By-Law, an application therefor shall be submitted simultaneously with an application for site plan review under said Section 10.2. So as to comply with Section 22 of the Green Communities Act, amending G.L c. 25A sec 10 (c), the review of such application shall be expedited and a decision thereon shall be rendered no later than one (1) year from the date of submittal thereof. (Amended 2010)

F. Permit Issuance

1. Permits for earth removal may be issued by the Board of Selectmen subject to the approval where required and the advice where applicable of the Planning Board, Conservation Commission, Board of Health, Highway Department, Police Department and other relevant town departments, subject to the express limitations provided hereinafter and to such additional limitations of time and usage as the Board feels are reasonably required to satisfy the purpose of this bylaw. The Board of Selectmen shall be guided by the standards for earth removal in subdivisions as adopted from time to time by the Planning Board in their Rules and Regulations for Subdivisions.
2. Permits for earth removal shall be issued only upon condition that a cover of topsoil of not less than six inches (6") in depth shall be replaced or allowed to remain, except where, due to construction of roads, buildings or other permanent physical features, such provision is impractical. Such topsoil cover shall be seeded with a perennial cover crop to assure uniform growth and surface soil stabilization.
3. In exercising its discretion under this bylaw, the Board of Selectmen shall not issue any permit for earth

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removal if in their opinion such removal will:

- a. Endanger the public health or safety or constitute a nuisance because of noise, vibration, smoke, gas fumes, odor, erosion, pollution or other objectionable features, hazard or explosion or fire.
- b. Produce noise, dust or other effects observable at the lot lines in amounts seriously objectionable or detrimental to the normal use of the adjacent property or the economic condition of the district or town.
- c. Result in the transportation over town ways which will be injured in any way by loads in excess of the road capability or by means of handling vehicles used to transport earth or of handling materials in transport.
- d. Alter any significant topographical feature or result in a change in the topography and cover which will be disadvantageous to the appropriate reuse of the land as permitted by the Zoning Bylaw.

G. Prohibitions

The Board of Selectmen shall not issue any earth removal permit if the work extends within three hundred feet (300') of a way open to public use, whether public or private, or two hundred fifty feet (250') of a building or structure, or within one hundred feet (100') of a natural stream or body of water unless the Board is satisfied that the removal will not undermine the way or structure and will not cause damage to the abutting property, stream or body of water.

H. Validity

The invalidity of any section, subsection or provision of this bylaw shall not invalidate any other section or provision thereof.

I. Administration, Enforcement and Penalties

1. The Board of Selectmen or duly authorized representative shall review the progress of the work from time to time to ensure proper conduct.
2. If the Board of Selectmen concludes that there has been a violation of this bylaw, a notice of violation shall be sent to the landowner and where applicable, the permit holder, by registered or certified mail to the address of the landowner on the Town records and, when applicable, to the address of the permit holder on the initial application, and may send a notice ordering a cessation of the improper activities, or take any other action necessary to prohibit further violation.
3. Each violation of this bylaw shall be subject to a fine of \$50 for the first offense, \$100 for the second and \$200 for each subsequent offense, under the terms of General Laws, Ter. Ed., Chapter 40, Section 21, Paragraph 17. Each truckload, or partial truckload, and each day of noncompliance shall constitute a separate offense. The land owner, the permit holder and the driver of the truck shall be jointly and severally liable for the fines.
4. Whether or not specified in the permit, the Board of Selectmen shall have the power to revoke or suspend a permit issued under this bylaw if any permit provisions are not fully complied with by the permit holder or any of its employees, agents, or contractors, either directly or indirectly.

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CHAPTER XIII SMOKE DETECTORS AND SPRINKLER SYSTEMS

All buildings or structures occupied in whole or in part for residential purposes and not regulated by Sections 26A, 26B or 26C of the Massachusetts General Laws, shall upon the sale or transfer of such building or structure, be equipped by the seller with approved smoke detectors as provided in Section 26E of the Massachusetts General Laws. The head of the Fire Department shall enforce the provisions of this bylaw. The provisions of Chapter 148, Section 30, of the Massachusetts General Laws shall not apply to this bylaw. (Amended 5/9/81)

SPRINKLER SYSTEMS

In any city or town which accepts the provisions of this section, every building or addition of more than seven thousand five hundred gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. No such sprinkler system shall be required unless sufficient water and water pressure exists. For purposes of this section, the gross square feet of a building or addition shall include the sum total of the floor areas for all floor levels, basements and subbasements, measured from outside walls, irrespective of the existence of interior fire restrictive walls, floors and ceilings.

In such buildings or additions, or in certain areas of such buildings or additions, where the discharge of water would be an actual danger in the event of fire, the head of the fire department shall permit the installation of such other fire suppressant systems as are prescribed by the state building code in lieu of automatic sprinklers. Automatic suppressant or sprinkler systems shall not be required in rooms or areas of a telephone central office equipment building when such rooms or areas are protected with an automatic fire alarm system. Sprinkler systems shall not be required in a one-story building having a fire resistance rating as prescribed in the state building code that is solely for offices, provided the building is protected by an automatic fire alarm system. This section shall not apply to buildings or additions used for residential purpose.

The head of the fire department shall enforce the provisions of this section.

This act shall apply to construction of buildings or additions or major alterations commenced after July 1, 1983.

SMOKE DETECTORS

In any city or town which accepts this subsection, one- and two-family dwellings occupied in whole or in part for residential purposes and not required by section twenty-six A or twenty-six B shall be equipped with approved smoke detectors. Owners of such buildings or structures shall install either an approved monitored battery-powered smoke detector or an approved primary power smoke detector on each level of habitation and on the basement level; provided however, that the head of the fire department shall allow the installation of approved monitored battery-powered smoke detectors. Such approved smoke detectors shall be installed in the following manner: an approved smoke detector shall be installed on the ceiling of each stairway leading to the floor above, near the base of, but not within each stairway, and an approved smoke detector shall be installed outside each separate sleeping area.

Buildings or structures occupied in whole or in part for residential purposes and containing not less than three nor more than five units and not regulated by Section twenty-six A, twenty-six B or twenty-six C shall be equipped with approved smoke detectors. Owners of such buildings or structures shall install either an approved

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monitored batter-powered smoke detector or an approved primary-power smoke detector outside each separate sleeping area; provided, however, that the head of the fire department shall allow the installation of approved monitored battery-powered smoke detectors; and provided further, that in all common hallways and basements of said residential buildings or structures a series of interconnected approved primary-power smoke detectors shall be installed.

For the purposes of this section, "approved primary power" shall mean an alternating-current primary source of electric power furnished by an electric power or light company municipally operated or operating under the authority of the department of public utilities which is the primary source of electricity or is a secondary source but is permanently wired thereto and will become operational upon the failure of the primary source of power.

The head of the fire department shall enforce the provisions of this section. The provision of section thirty shall not apply to this section.

CHAPTER XIV FIRE AND INTRUSION ALARMS

The Emergency Center Advisory Committee with the approval of the Board of Selectmen, if such Committee shall not be appointed, the Board of Selectmen, is authorized to establish rules, regulations, and schedules of fees for the installation, operation, and maintenance of fire and intrusion alarm systems, including medical alert systems. No person shall install, operate, or maintain a fire intrusion, or medical alert alarm system which is connected by direct line to the Emergency Center or which incorporates a telephone dialing device programmed to dial a local police, fire or emergency telephone number automatically, or which uses exterior audible signals at the alarm location, unless such person first obtains a permit from the Emergency Center Advisory Committee, or the Board of Selectmen, and thereafter complies with applicable rules and regulations and pays any applicable fees. No person shall intentionally transmit any false fire, intrusion, or medical alert alarm. Repeated transmissions of false fire, intrusion or medical alert alarms after notice of a system malfunction from the Emergency Center Advisory Committee or the Board of Selectmen, shall constitute an intentional transmission of a false fire, intrusion, or medical alert alarm. Violation of this bylaw shall be punishable by a fine of up to but not more than one-hundred dollars (\$100) for each offense. (Amended 5/12/84)

CHAPTER XV REPAIR OF PRIVATE WAYS

The Town of Wenham is authorized to make temporary repairs on private ways in accordance with the following bylaw:

1. The owners of land which abuts and has frontage on a private way open to continuous public use for (10) years or more may petition the Board of Selectmen, on a form to be provided by the town, which must be signed by at least 80 percent of the abutters of such private way, to have the town make temporary emergency or general repairs to such private way. If the Board of Selectmen determine first the public necessity will be served thereby, it may authorize such repairs to be made by the town in accordance with the provisions of this bylaw, upon the condition that the petitioning abutters agree to indemnify and hold the town harmless for

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claims for personal and property injury resulting from any defects in such private way.

2. If upon receipt of an abutter's petition the Board of Selectmen determine that public safety access and safe passage of public service vehicles on the private way so require, it may order that temporary emergency repairs be made to the private way at the town's expense. Such temporary emergency repairs shall be limited to the filling and patching of holes in the surface of such private ways or the least expensive feasible correction to a defect in drainage which has caused a blockage of such private way.

3. Temporary general repairs shall be any repairs to private ways which are not emergency repairs as provided in the preceding section, and which are reasonable and appropriate to serve the public necessity and convenience as determined by the Board of Selectmen. Temporary general repairs may include the installation and construction of drainage where required; the filling of holes in the surface of such ways and repairs to the surface materials; and the reconstruction and resurfacing of the base and surface of the way. Materials for such repairs shall, where practical, be the same as or comparable with those for the existing surfaces of such ways, but may include resurfacing the ways with bituminous materials including bituminous concrete. The cost of labor to perform temporary general repairs shall be paid by the town, and may be performed by employees of the town provided that the cost of materials is paid by the abutters of such private ways as betterments. Temporary general repairs shall not be undertaken until (1) the Finance and Advisory Board determines that the budget cost of such repair work to be paid by the town is includable in the town's operating budget for the year, or in the alternative, has been separately raised and appropriated by vote of an annual or special town meeting, and (2) the town acting through the Board of Selectmen has assessed betterments for cost of repair materials upon the owners of properties abutting and having frontage on such private way, allocated in proportion to the frontage thereof on such way, and said owners have deposited in full the projected costs of the materials required to perform such repairs.

4. The town shall not be liable on account of any damage caused by temporary emergency repairs or general repairs performed by the town pursuant to this bylaw. The town shall post warning signs at the beginning of such private way that the town is not responsible for any defects in such way, and that members of the public use the same at their own risk.

CHAPTER XVI HOUSE NUMBER BYLAW

A. Bylaw

All houses, businesses, and other buildings within the Town of Wenham shall conspicuously display street identification numbers to assist emergency vehicles, postal and delivery vehicles to locate specific properties in the town.

1. It shall be the duty of each owner or occupant to provide for the display of such number in such a manner that it is visible from the street.

2. Said number shall be a minimum of three inches in height and contrasting in color.

3. In the event that the house, building or business is not visible from the street, the number shall be displayed on a post or mailbox which is visible from the street.

B. Penalty

1. Upon notice of a violation, the Board of Selectmen or Chief of Police will notify the owner or occupant in writing at the earliest convenience of either of the officials.

2. An owner or occupant shall have thirty days to correct such violation. If the owner or occupant fails to place the numbers in the manner required by the bylaw. within 30 days, the penalty

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shall be a five dollar fine for each day the numbers are not displayed. If no action is taken within 30 days of the written notice, the fine shall be retroactive to the date of the written notice being issued.

(Voted May 9, 1987)

CHAPTER XVII ANIMAL CONTROL OFFICER FEES

A person who owns or keeps a dog, or other domesticated animal within the territorial limits of the Town of Wenham, shall be responsible for the following fees when the service of the Animal Control Officer is required in connection with any such dog or domesticated animal.

1. First service within a calendar year Free
2. Second service within a calendar year \$25
3. Third service and any subsequent service \$50
4. A pick-up fee of \$15 shall be paid to the Town for any dog retrieved by the animal control officer.
5. All fees incurred as a result of the impounding of a dog. shall be collected prior to the release of said dog from impoundment.
6. Any person who is the owner, or keeper of a dog, or a kennel within the Town of Wenham, who fails to obtain a license for said dogs or kennel, as required in Chapter 140 of the Massachusetts General Laws, within thirty days of the date on which the license is due, shall pay in addition to the fee for such license, a penalty fee of \$5 if payment is made thirty-one to sixty days after the due date; a penalty of \$10 if payment is made sixty-one to ninety days after the due date; and a penalty of \$15 if payment is made after ninety-one days following the due date. All penalty fees required under this section shall be made payable to the Town of Wenham.
7. If the animal control officer determines that a female animal in heat, even confined, is attracting other animals, thus causing a disturbance or damage to neighboring property or public area, the animal control officer may require the owner or keeper of the animal, to confine said animal, while in heat, in a kennel or to remove it from the area so that the nuisance is abated.

"Service" of the Animal Control Officer shall consist of the response of the officer to a specific location, and the removal, restraint, or impounding of the dog or domesticated animal, whether occasioned by request of a citizen, town official or otherwise. Fees shall be payable to the Town of Wenham. (Amended May 1993)

CHAPTER XVIII WATER RESOURCES PROTECTION BYLAW

SECTION 1

Purpose

The purpose of this bylaw is to maintain the quality of surface water and groundwater; to maintain the level of the groundwater table and water recharge areas for existing or potential water supplies; to protect persons and property against the hazards of flood water inundation; to protect and conserve natural features, resources, and amenities for the benefit and welfare of present and future citizens of the Town of Wenham.

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This bylaw is intended to protect the water resources, wetlands, and adjoining areas in Wenham by prior review and control of activities deemed by the Conservation Commission likely to have a significant or detrimental effect upon the following values: public or private water supply, groundwater, fisheries, wildlife, wildlife habitat and the prevention and control of flooding, erosion, sedimentation, storm damage, or pollution (collectively, the "resource area values protected by the bylaw"). This bylaw is intended to utilize the Home Rule Authority of this town to protect additional resource areas, for additional values, with additional standards and procedures to augment those of the Wetlands Protection Act, G.L. Ch. 131, sec. 40 and Regulations there under, 310 CMR 10.00.

SECTION 2

Jurisdiction

Except as permitted in writing by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, discharge into, build upon, otherwise alter, pollute, or degrade the following resource areas: any freshwater wetland as determined by vegetational community, soils composition or hydrologic regime including any marsh, wet meadow, bog, or swamp; any vernal pool, any lake, stream, reservoir, river, or pond, whether intermittent or continuous, natural or manmade; land under such waters; bank or beach; land subject to flooding or inundation by groundwater, surface water or storm water (collectively the "wetland resource areas protected by this bylaw") or lands within one hundred (100) feet of any of the aforesaid resource areas (collectively "the adjacent upland resource areas protected by this bylaw").

SECTION 3

Exceptions

The application and permit required by this bylaw shall not be required for maintaining, repairing, but not substantially changing, relocating or enlarging, any existing or lawfully located structure or facility used in the service of the public to provide electricity, gas, water, telephone, telegraph, or other telecommunication services, provided that, except in cases of public emergency, written notice and plan of work has been given to the Commission at least forty-eight (48) hours prior to commencement of work, and provided that the work is performed in accordance with standards adopted in regulations promulgated under this bylaw.

The application and permit required by this bylaw shall not apply to any emergency project necessary for public health and safety, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that notice, oral or written, has been given to the Commission or its agent within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposed necessary to abate the emergency and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The application and permit required by this bylaw shall not be required for work performed for the normal maintenance or improvement of lands in lawful, active agricultural use, provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission. Other than as stated in this section, the exceptions provided in the Wetlands Protection Act, G.L. Ch. 131, sec. 40 and Regulations, 310 CMR 10.00 shall not apply under this bylaw.

SECTION 4

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Requests for Determination and Applications for Permits

Written application shall be filed with the Commission to perform activities affecting wetland and upland resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their potential effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw shall request in writing a determination from the Commission. Such request for determination shall contain data and plans as specified by regulations adopted under this bylaw.

The Commission in an appropriate case may accept any request, application and plans filed under M.G.L. Ch. 131 Sec. 40 as having also been filed under this bylaw. An application for a permit or a request for determination shall be hand delivered or sent by certified mail to the Commission.

The Commission may reasonably request that a separate submittal be made under this bylaw if concerns which may arise pursuant to this by-law are not addressed as part of the original submittal.

Where a permit is required hereunder in connection with the development of a large-scale ground-mounted solar photovoltaic installation pursuant to Section 10.2 of the Zoning By-Law, an application therefor shall be submitted simultaneously with an application for site plan review under said Section 10.2. If a determination of applicability is sought, a request therefore shall be submitted and a determination thereon rendered prior to submittal of an application for site plan review. (Amended 2010)

The applicant shall pay fees as specified in regulations adopted under this bylaw. The fee is in addition to that required by the Wetlands Protection Act, M.G.L. Ch. 131, sec. 40. The Commission may waive the fees, costs, and expenses for an application or request filed by a government agency, or if the project serves a public purpose as determined by the Commission.

Upon receipt of a permit application or Request for Determination, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for expert engineering and other consultant or legal services ("Consultant Services") deemed necessary by the Commission to come to a final decision on the application. This fee is called the "consultant fee". The Consultant Services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law.

The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information available through outside consultants is necessary for the making of an objective decision. Any applicant aggrieved by the imposition of, or amount of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws. The consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be based on the overall project costs and shall not exceed \$15,000.

SECTION 5

Notice and Hearings

Any person filing a permit or other application or Request For Determination ("RFD") with the Commission, shall give written notice by certified mail (return receipt requested) or hand delivered, to all abutters at their

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mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way or across a body of water (within 300 feet of the boundaries of the locus of the proposed project or within 100 feet of the property line on which the project is to be carried out, whichever is greater), including any in another municipality. The Commission may at its own discretion request that additional parties who may be affected by the proposed project (including but not necessarily limited to, those affected by or through changes in surface water runoff patterns, impact on the groundwater table, etc.) be notified according to the procedures established for abutters as described above. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall conduct a public hearing on any permit application, Abbreviated Notice of Resource Area Delineation (ANORAD), or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in Wenham.

The Commission shall commence the public hearing within 21 days from receipt of a completed permit application, ANORAD, or RFD unless an extension is authorized in writing by the applicant or unless a hearing is delayed beyond 21 days by conditions beyond the reasonable control of the Commission, in which case the hearing will be held as soon as reasonably possible. The Commission shall have the authority to continue the hearing to a specific date announced at the hearing for reasons stated at the hearing, which may include the need for additional information from the applicant or from others as deemed necessary by the Commission in its discretion, to solicit or respond to comments and recommendations of the boards and officials listed in the following section. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

The Commission shall issue its permit, other order, or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

So as to comply with Section 22 of the Green Communities Act, amending the G.L. c.25A sec 10 (c), the review of a permit application made hereunder in connection with the development of a large-scale ground-mounted solar photovoltaic installation, as aforesaid, shall be expedited and a decision thereon shall be rendered no later than one (1) year from the date of submittal thereof. Determinations of applicability shall be made expeditiously, so as to not delay application for site plan review pursuant to Section 10.2 of the Zoning By-Law and/or for a permit hereunder.

The Commission shall combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, G.L. Ch. 131, §40, and Regulations, 310 CMR 10.00 in instances of concurrent jurisdiction.

SECTION 6

Coordination with Other Boards

The Conservation Commission may choose to solicit the advice and opinions of other Town boards and officials in the course of its deliberations. Town boards and officials shall be entitled to file written comments and recommendations with the Commission at or before the public hearing. The Commission shall take any such comments and recommendations into account but shall not be bound by them. The applicant shall have the right to receive any comments and recommendations, and will be given the opportunity to respond to them at a hearing of the Commission, prior to final action.

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Any application for a permit or determination shall at the same time be mailed or delivered to the Board of Selectmen, Planning Board, Zoning Board of Appeals, Board of Health and Building Inspector.

SECTION 7

Determinations, Permits, and Conditions

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom, are likely to have a significant effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

Where no conditions are adequate to protect those resource values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. It may also deny a permit; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid or prevent unacceptable effects upon the resource area values protected by this bylaw. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Lands within 200 feet of rivers, ponds and lakes, and lands within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource areas, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may therefore establish performance standards for protection of such lands including without limitation strips of continuous, undisturbed vegetative cover within the 200-foot or 100-foot area, or other form of work limit or setback to buildings, roads, landscaping and other features, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw. The specific size and type of protected area may be established by regulations of the Commission.

In the review of areas within 200 feet of rivers, ponds and lakes, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation which shall include, at a minimum, complete replacement or restoration of the lost wetlands. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security,

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professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or possible presence of rare species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

The Commission shall presume that all areas meeting the definition of "vernal pools" under Section 9 of this bylaw, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual meeting the qualifications under the wildlife habitat section of the Wetlands Protection Act Regulations.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke any permit, other order, determination or other decision issued under this bylaw after notice to the holder of the permit, the public, abutters, and town boards, pursuant to Sections 5 and 6, and a public hearing. Amendments to permits or determinations shall be handled in the manner set out in the Wetlands Protection Act Regulations and policies thereunder.

The Commission in an appropriate case may combine the decision issued under this bylaw with the Order of Conditions, Order of Resource Area Delineation (ORAD), Determination of Applicability or Certificate of Compliance issued under the Wetlands Protection Act and Regulations.

No work proposed in any application shall be undertaken until the permit, ORAD or determination issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform, the Commission may record the documents itself.

SECTION 8

Regulations and Establishment of Fees

After public notice and public hearing, the Commission may promulgate or amend rules and regulations to accomplish the purposes of this bylaw and may establish a schedule of filing fees and consultant fees to be paid by persons making requests for determinations or applications for permits hereunder, effective when approved by majority vote of the Commission and filed with the town clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or

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invalidate the effect of this bylaw.

SECTION 9

Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw.

ADJACENT UPLAND RESOURCE AREA The term “adjacent upland resource area” shall include all lands with 100 feet of wetland resource areas as enumerated in Section 2, except for perennial streams and rivers for which the adjacent upland resource area extends for 200 feet from the top of bank, and except for vernal pools and ponds under 10,000 square feet in area for which special adjacent upland resource area definitions are described below.

ALTER The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- C. Drainage, or other disturbance of water level or water table
- D. Dumping, discharging, or filling with any material which may degrade or otherwise impact water quality
- E. Placing of fill, or removal of material, which would alter elevation
- F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting or trimming of trees and shrubs
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater (including the application of pesticides and herbicides)
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.
- L. Placing of materials which have a reasonable likelihood of contributing to pollution or of impacting water quality through surface run-off, groundwater infiltration or air borne transport including but not limited to yard and landscaping wastes and debris, slash, soils and sediments, woodchips, mulch, grit, gravel or other organic and inorganic materials.,

BANK The term “bank” shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

PERSON The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

POND The term “pond” shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

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RARE SPECIES The term “rare species” shall include, without limitation, all vertebrate and invertebrate animal and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

VERNAL POOL The term “vernal pool” shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 150 cubic feet of water (approximately 1000 gallons) at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas.

Except as otherwise required by this bylaw or regulations promulgated thereunder, definitions and regulations set forth in M.G.L. Ch. 131, sec. 40 and 310 Code of Mass. Regulations 10.00 effective November 1987 as amended from time to time shall apply.

SECTION 10

Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit

B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed. Unless postponement of the execution is due to circumstances beyond the reasonable control of the applicant and delays in conveyance would impose an unreasonable burden on the applicant.. This method shall be used only with the consent of the applicant.

SECTION 11

Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

The Commission and its agents shall have the authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the

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Commonwealth.

The Commission shall also have authority to enforce this bylaw, its regulations, and permits issued thereunder by enforcement orders, violation notices, non-criminal citations under G.L. Ch. 40 §21D[lh1][lh2] and civil and criminal court actions. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement. Any person who violates the provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the Selectboard and town counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.

Any person who violates any provision of this bylaw, or regulation, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues or unauthorized fill or other alteration remains in place shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in G.L. Ch. 40 21D, which has been adopted by the Town of Wenham in its general bylaws.

SECTION 12

Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

SECTION 13

Burden of Proof

The applicant for a permit shall have the burden of proof of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable significant effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

SECTION 14

Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with G.L. Ch. 249, sec. 4.

SECTION 15

Relation to the Wetland Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, M.G.L. Ch. 131, sec. 40, and Regulations 310 CMR 10.00, there.

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CHAPTER XIX NONCRIMINAL DISPOSITION OF CERTAIN VIOLATIONS

SECTION 1

Authority: In accordance with the provisions of Massachusetts General Law, Chapter 40, Sec. 21D, as amended, certain violations of the following listed bylaws, rules, and/or regulations of Town officials, boards and departments may be enforced pursuant to said Section 21D, as an alternative to initiating criminal proceedings.

SECTION 2

Enforcement: Noncriminal Disposition, when implemented, shall be enforced by the person(s) so designated in Section 4 below. The procedures shall be in accordance with Chapter 40, Section 21D.

SECTION 3

Penalties: The specific penalties for violations of the applicable bylaws, rules and regulations shall be as listed in Section 4 below.

SECTION 4

Applicable Bylaws, Rules or Regulations:

A. Zoning Bylaw: Notwithstanding the enforcement and penalties prescribed in the Wenham Protective Zoning Bylaw, Section XIV, and the Massachusetts General Laws Chapter 40A, the provisions of said Bylaw may be enforced by the Building Inspector by non-criminal complaint. Each day of violation shall constitute a separate offense. No enforcement shall be authorized until the enforcing officer has mailed by certified mail or delivered by hand to the offender, a written notice of violation and thirty days have expired from the date of mailing or delivery and no appeal pursuant to Chapter 40A has been filed, or if any appeal has been filed, final determination has been made favorable to the Town. The penalty for violations(s) shall be as follows:

1st Offense	Warning
2nd Offense	\$ 25
3rd Offense	\$ 50
4th Offense and each subsequent offense	\$100

B. Water Resources Protection Bylaw: In addition to the enforcement and penalties prescribed in the Wenham Water Resources Protection Bylaw, Section 9, the provisions of said bylaw may be enforced by the Conservation Commission, its agents, including the Conservation Commission Coordinator, Officers, and employees by non-criminal complaint. Each day of the violation shall constitute a separate offense. No enforcement shall be authorized until the enforcing officer has mailed, by certified mail, or delivered by hand to the offender, a written notice of violation and thirty days have expired from the date of mailing or delivery and no appeal has been filed, or if any appeal has been filed, final determination has been made favorable to the Town. The penalty for violation(s) shall be as follows:

Offense	Buffer Zone	Wetland Resource	Non-Compliance/COC
1st Offense	Warning	Warning	Warning
2nd Offense	\$ 50	\$100	\$200
3rd Offense	\$200	\$200	\$300
4th Offense	\$300	\$300	\$300

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CHAPTER XX FIRE LANE

SECTION 1

It shall be unlawful to obstruct or block a private way with a vehicle or other means as to prevent access by fire apparatus or equipment to any building.

SECTION 2

It shall be unlawful to obstruct or park any vehicle in any fire lane, such a fire lane to be designated by the Chief of the Wenham Fire Department and posted and marked as such. Said fire lanes shall be a width of twelve (12) feet from the curbing at a sidewalk for a mall, shopping center, nursing home or school. Where no sidewalk with curbing exists the width shall be eighteen (18) feet from the building.

SECTION 3

The building owner of record shall provide, install and maintain signs and/or markings as provided in section two (2) of the bylaw.

SECTION 4

The bylaw shall be enforced by the Police Department of the Town of Wenham.

SECTION 5

This bylaw shall pertain to all buildings in the Town of Wenham except buildings used for residence use, but limited to four (4) dwelling units or less.

CHAPTER XXI WATER USE RESTRICTION

(Amended ATM vote 5/3/2008)

SECTION 1

Authority

This Bylaw is adopted by the Town of Wenham under its police powers to protect public health and welfare and its powers under M.G.L. c.40, S21 et seq. and implements the Town's authority to regulate water use pursuant to M.G.L. c. 41, S69B. This bylaw also implements the Town's authority under M.G.L. c.40, S41A, conditioned upon a declaration of water supply emergency issued by the Massachusetts Department of Environmental Protection.

SECTION 2

Purpose

The purpose of this bylaw is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or

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by the Massachusetts Department of Environmental Protection.

SECTION 3

Definitions

Person shall mean any individual, corporation, trust, partnership or association, or other entity.

State of Water Supply Emergency shall mean a State of Water Supply Emergency declared by the Massachusetts Department of Environmental Protection under M.G.L. c.21G, S15-17.

State of Water Supply Conservation shall mean a State of Water Supply Conservation declared by the Town of Wenham Water Commissioners pursuant to section 4 of this bylaw.

Water Users or Water Consumers shall mean all public and private users of the Town of Wenham's public water system, and/or of groundwater within the borders of the Town of Wenham and extracted from the Ipswich River Watershed. The restrictions shall apply to all water used in the town of Wenham, to include Town water and water supplied by private wells, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

Seasonal Restrictions shall prohibit outdoor watering through a sprinkler or lawn irrigation system between the hours of 9 am to 5 pm between May 1 and September 30 of each year using town water or private well water.

SECTION 4

Declaration of a State of Water Supply Conservation

The Town of Wenham, through its Board of Water Commissioners may declare a State of Water Supply Conservation upon determination by a majority vote of the Board that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all consumers, to include fire fighting operations and to ensure compliance with the Massachusetts Department of Environmental Protection's Permitted and Registered withdrawals. Public notice of a State of Water Conservation shall be given under section 6 of this bylaw before it may be enforced.

SECTION 5

Restricted Water Uses:

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under section 6.

a. **Odd/Even Day Outdoor Watering.** Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by water users with even numbered addresses is restricted to even numbered days.

b. **Outdoor Watering Ban:** Outdoor watering, including but not limited to use of water for irrigation and automobile, property and building washing is prohibited.

c. **Outdoor Watering Hours:** Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.

d. **Rain/moisture Sensors:** All new automatic irrigation systems shall have a moisture or rain sensor installed as part of the system to prevent unnecessary watering. All existing automatic irrigation systems shall have a moisture or rain sensor installed as part of the system.

e. **Filling Swimming pools:** Filling of swimming pools is prohibited.

f. **Outdoor Sprinkler Use:** The use of lawn and garden sprinklers of all types, including the use of automatic sprinkler systems is prohibited. Hand watering is permitted.

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SECTION 6

Public Notification of State of Water Supply Conservation

Notification of any provision, restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town, by mail, or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Any restriction imposed under section 5 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

SECTION 7

Termination of State of Water Supply Conservation; Notice

A State of Water Supply Conservation may be terminated by a majority vote of the Board of Water Commissioners, upon determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by section 6.

SECTION 8

State of Water Supply Emergency; Compliance with DEP Orders

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the Department intended to bring about an end to the State of Emergency.

SECTION 9

Penalties

Any person violating this bylaw shall be liable to the Town of Wenham in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation which shall inure to the Town direct. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with section 21D of chapter 40 of the General Laws of Massachusetts. Each day of violation shall constitute a separate offense.

The Wenham Police and the Wenham Water Department Superintendent are hereby authorized to enforce this bylaw under section 21D of Chapter 40 of the General Laws of Massachusetts.

SECTION 10

Severability

The invalidity of any portion or provision of this bylaw shall not invalidate any other portion or provision thereof.

CHAPTER XXII COMMUNITY PRESERVATION ACT/COMMUNITY PRESERVATION COMMISSION

Chapter 1 Establishment

1. There is hereby established a Community Preservation Committee consisting of nine voting members

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pursuant to Massachusetts General Laws Chapter 44B. The Committee shall consist of the following members:

- One member of the Historic District Commission as designated by the Commission
- One member of the Housing Authority as designated by the Authority
- One member of the Planning Board as designated by the Board
- One member of the Recreation Commission as designated by the Commission
- One member of the Conservation Commission as designated by the Commission
- Four at-large members to be designated by the Board of Selectmen

2. The term for the first-appointed Community Preservation Committee will begin on January 1, 2006, ending on May 31, 2008. Subsequent terms will begin on June 1 of each year and will be for two years. Any vacancy on the Community Preservation Committee shall be filled by the commission, authority or board that designated the member who creates the vacancy by designating another member in accordance with Section (1) above for the unexpired term.

3. Should any commission, authority or board designating a member for the Community Preservation Committee cease to exist for whatever reason the Board of Selectmen will determine the appropriate alternative designating commission, authority or board.

Chapter 2. Duties

1. The Community Preservation Committee shall study the needs, possibilities and resources of the town regarding community preservation. The committee shall consult with town boards and others including, but not limited to, the Historical Commission, the Housing Authority, the Planning Board, the Conservation Commission, and the Recreation Commission in conducting such studies. As part of its studies the Committee shall hold one or more public informational hearings on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice of which shall be posted publicly, including on the Town's web page, and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town. The Committee will file an annual report on its activities to the Town Clerk.

2. The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space; for the acquisition, rehabilitation, restoration and preservation of historic resources; for the acquisition, creation and preservation of land for recreational use; for the creation, preservation and support of community housing; and for the rehabilitation or restoration of such open space, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings, or construction of new buildings on previously developed sites.

3. The Community Preservation Committee may include in its recommendations to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation, but for which sufficient funds are not then available in the Community Preservation Fund to accomplish that specific purpose, or to set aside for later spending funds for general purposes that are consistent with community preservation.

Chapter 3. Requirements for a quorum and cost estimates

The Community Preservation Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the Community Preservation Committee shall constitute a quorum. The

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Community Preservation Committee shall approve its actions by majority vote. Meetings will be held in accordance with the open meeting law. Recommendations to the Town Meeting shall include their anticipated costs.

Chapter 4. Amendments

The Community Preservation Committee shall, from time to time, review the administration of this By-law, making recommendations, as needed, for changes in the By-law and in administrative practice to improve the operations of the Community Preservation Committee. The first review shall be completed at least by November 1, 2008 and subsequent reviews shall be completed in no more than five-year intervals. This Bylaw may be amended from time to time by a majority vote of the Town Meeting, provided that the amendments would not be in conflict with Chapter 44B of the Massachusetts General Laws.

Chapter 5. Severability

In case any section, paragraph or part of this By-law be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect

Chapter 6. Effective Date

This vote shall take effect and this Bylaw shall be submitted to the Attorney-General of the Commonwealth only upon certification that a majority of voters have approved a ballot question accepting sections 3 to 7, inclusive, of Massachusetts General Laws Chapter 44B. Upon approval of this Bylaw by the Attorney General of the Commonwealth, the Board of Selectmen shall request the Historic District Commission, the Housing Authority, the Planning Board, the Conservation Commission, and the Recreation Commission to designate a member to serve on the Community Preservation Committee. The Board of Selectmen will designate four at-large members of the Community Preservation Committee.

CHAPTER XXIII ANIMAL CONTROL BYLAW

A. Administration

Section 1: The Board of Selectmen shall annually appoint an Animal Control Officer who shall be responsible for the enforcement of this bylaw and the General Laws relating to the regulation of animals.

Section 2: For purposes of this bylaw and Massachusetts General Laws, Chapter 140, section 157, the Board of Selectmen shall be the Hearing Authority.

B. Animal Control

Section 1: The provisions of M.G.L. c.140 applicable to animal licensing and tagging are hereby incorporated herein.

Section 2: The fee to license an intact male or female dog will be \$15.00. The fee to license a spayed female or neutered male dog will be \$10.00. Personal kennels for four dogs will be \$50.00, five to ten dogs \$100.00, and

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more than ten dogs \$150.00. The fee to license a commercial kennel will be \$200.00, provided that no commercial kennel license shall be issued or renewed until the Animal Control Officer has inspected and approved the premises. No fee is imposed for domestic charitable corporation kennel licenses operated exclusively to protect animals from cruelty, neglect, abuse, or for relief from suffering.

Section 3: In addition to the license fees required by Section 1, there shall be assessed a late charge of twenty-five dollars (\$25.00) with respect to any dog that is not licensed before January 31st of each year.

Section 4: No dog collected under the provisions of this Bylaw, or the provisions of Massachusetts General Laws, Chapter 140, as amended, shall be released unless it has been licensed as required by this Chapter.

Section 5: The owner or keeper of a dog found in violation of this Bylaw or the provisions of Massachusetts General Laws, Chapter 140, as amended, which has been impounded, shall pay fees equal to the expenses incurred by the Town for the collection, initial handling, and daily care (if applicable) of such dogs. These fees shall be established by the Board of Selectmen, in accordance with Massachusetts General Laws, Chapter 140, as amended.

Section 6: No dog may be allowed to run free in public parks, schoolyards, recreation areas, or cemeteries.

Section 7: Any person may make a written complaint to the selectmen that any dog owned or kept within the Town is a Nuisance Dog or a Dangerous Dog, as those terms are defined in M.G.L. Chapter 140, Section 157. The Board of Selectmen shall investigate or cause to be investigated such complaint, including an examination under oath of the complainant at a public hearing in the municipality to determine whether the dog is a Nuisance Dog or a Dangerous Dog, and the Animal Control Officer shall make such order concerning the restraint or disposal of such dog as provided in M.G.L. c.140, Section 157. Violations of such orders shall be subject to the enforcement provisions of M.G.L. Chapter 140, Section 157 and 157A, which, upon conviction, may include: for a first offense, a fine of not more than \$500 or imprisonment for not more than 60 days in a jail or house of correction, or both, and for a second or subsequent offense by a fine of not more than \$1,000 or imprisonment for not more than 90 days in a jail or house of correction.

Section 8: In accordance with M.G.L. Chapter 140, Section 173A, and General Law Chapter 40, Section 21D, Non-Criminal Disposition Fines, may be used to enforce this bylaw. The Animal Control Officer, any police officer or any other person so appointed by the Board of Selectmen may issue notices of violation of bylaw. The fines for such violations, per dog, shall be as follows:

First offense: Written warning, no fine

Second offense: \$25.00

Third offense: \$50.00

Subsequent offenses: \$ 100.00

Approved by the Special Town Meeting 11/5/2013, Accepted by the Attorney General 11/25/2013, Effective January 1, 2014

CHAPTER XXIV STORM WATER MANAGEMENT BYLAW **BYLAW GOVERNING DISCHARGES TO THE MUNICIPAL STORM DRAIN SYSTEM**

1.0 PURPOSE

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Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.

The regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the Town of Wenham's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

The purpose of this Bylaw is to prevent pollutants from entering the Town of Wenham's municipal separate storm sewer system (MS4), require the removal of all such illicit connections; comply with state and federal statutes and regulations relating to stormwater discharges, and to establish the legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement

2.0 DEFINITIONS

AUTHORIZED ENFORCEMENT AGENCY: The Board of Selectmen (hereinafter the Board) or its employees, officers or agents designated to enforce this bylaw.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

CLEAN WATER ACT: The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth of Massachusetts from any source.

GROUNDWATER: Water beneath the surface of the ground.

ILLICIT CONNECTION: A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this Bylaw

ILLICIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 7. The term does not include a discharge in compliance with an NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to Section 7 of this bylaw.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a

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drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Wenham.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER

DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

NON-STORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.

PERSON or USER: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth of Massachusetts or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POLLUTANT: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth of Massachusetts. Pollutants shall include without limitation:

- paints, varnishes, and solvents;
- oil and other automotive fluids;
- non-hazardous liquid and solid wastes and yard wastes;
- refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- pesticides, herbicides, and fertilizers;
- hazardous materials and wastes; sewage, fecal coliform and pathogens;
- dissolved and particulate metals;
- animal wastes;
- rock, sand, salt, soils;
- construction wastes and residues; and
- and noxious or offensive matter of any kind.

PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

STORMWATER: Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

SURFACE WATER DISCHARGE PERMIT: A permit issued by the Massachusetts Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

TOXIC OR HAZARDOUS MATERIAL or WASTE: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human

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health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

WATERCOURSE: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, costal waters, and groundwater.

WASTEWATER: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

3.0 APPLICABILITY

This Bylaw applies to any and all flows entering the municipally owned storm drainage system, stormwater discharges, and/or indirect stormwater discharges.

4.0 AUTHORITY

This Bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

Nothing in this Bylaw is intended to replace the requirements or authority of any other bylaw, state, federal or superceding authority.

5.0 ADMINISTRATION

The Authorized Enforcement Agency shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon the Authorized Enforcement Agency may be delegated in writing by the Authorized Enforcement Agency to employees, officers or agents of the Town Administrator, Department of Public Works, Board of Health, Conservation Commission, Planning Board or other Town Department.

6.0 REGULATIONS

The Authorized Enforcement Agency may promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Authorized Enforcement Agency to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

7.0 PROHIBITED ACTIVITIES

Illicit Discharge - No person shall dump, discharge, cause or allow to be discharged any pollutant, or non-stormwater discharge into the municipal storm drain system, watercourse, waters of the Commonwealth or

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abutting property.

Illicit Connection - No person shall construct, use, allow, maintain or continue any connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

Obstruction of the Municipal Storm Drain System – No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Planning Board

8.0 EXEMPTIONS

This article shall not apply to any of the following non-stormwater discharges or flows provided that the source is not a significant contributor of a pollutant to the municipal storm drain system.

Waterline Flushing.

Flows from potable water sources.

Springs.

Natural flows from riparian habitats and wetlands.

Diverted stream flows.

Rising groundwater.

Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater.

Uncontaminated groundwater discharge from a residential sump pump.

Water from exterior foundation drains, footing drains (not including active or pipelines), crawl space pumps, or air conditioner condensation.

Discharges from landscape irrigation or lawn watering.

Water from individual residential car washing.

Discharges from dechlorinated swimming pool water (less than one part per million chlorine) provided it is allowed to stand for one week prior to draining, or tested for chlorine levels with a pool test kit prior to draining, and the pool is drained in such a way as to not cause a nuisance.

Discharges from street sweepers of minor amounts of water during operations.

Discharges or flows resulting from fire fighting activities.

Dye testing, provided written notification is given to the Authorized Enforcement Agency prior to the time of the test, preferably at least 72 hours prior to the start of the testing.

Non-stormwater discharges permitted under an National Pollutant Discharge Elimination System (NPDES) Permit, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver or order and applicable laws and regulations.

Discharges for which advanced written approval is received from the Authorized Enforcement Agency if necessary to protect public health, safety, welfare or the environment.

9.0 EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS

The Authorized Enforcement Agency may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge that presents or may present imminent risk of harm to the public health, safety, welfare or the

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environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, and welfare of the environment.

Any user that denies the Authorized Enforcement Agency reasonable access to the user's premises for the purpose of inspection, monitoring, records examination, or sampling of non-stormwater or stormwater discharges is subject to discharge termination.

Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Authorized Enforcement Agency may take such steps as deemed necessary, including immediate severance of the sewer or storm drain connection, to prevent or minimize damage to the municipal storm drain system, its receiving stream, or endangerment to any individuals. The Authorized Enforcement Agency may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Authorized Enforcement Agency that the period of endangerment has passed.

10.0 NOTIFICATION OF SPILLS

Notwithstanding any other requirements of local, state or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility operation which is resulting or may result in illegal discharge of pollutants that person shall take all necessary steps to ensure containment, and cleanup of the release.

In the event of a release of oil or hazardous materials, the person shall immediately notify the Wenham Fire and Police Departments, Department of Public Works and Board of Health. In the event of a release of non-hazardous material, said person shall notify the Department of Public Works no later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the Department of Public Works within three business days thereafter.

If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

11.0 Enforcement

The Authorized Enforcement Agency or an authorized agent of the Authorized Enforcement Agency shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

Civil Relief - If a person violates the provisions of this bylaw, regulations, permit, notice, or order issued thereunder, the Authorized Enforcement Agency may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Orders – The Authorized Enforcement Agency or an authorized agent of the Authorized Enforcement Agency may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, which may

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include:

elimination of illicit connections or discharges to the MS4;
performance of monitoring, analyses, and reporting;
that unlawful discharges, practices, or operations shall cease and desist; and
remediation of contamination in connection therewith.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Wenham may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Wenham, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Authorized Enforcement Agency within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Authorized Enforcement Agency affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, 57 after the thirty-first day at which the costs first become due.

Criminal Penalty - Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$200. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

Entry to Perform Duties Under this Bylaw - To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Authorized Enforcement Agency, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Authorized Enforcement Agency deems reasonably necessary.

Appeals - The decisions or orders of the Authorized Enforcement Agency shall be final. Further relief shall be to a court of competent jurisdiction.

Remedies Not Exclusive - The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

12.0 Severability

The provisions of this bylaw are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.

13.0 Transitional Provisions

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Residential property owners shall have 90 days from the effective date of the bylaw to comply with its provisions provided good cause is shown for the failure to comply with the bylaw during that period.

CHAPTER XXV WENHAM HISTORICAL COMMISSION

SECTION 1

This bylaw shall be known and may be cited as the Wenham Historical Commission Bylaw and is adopted pursuant to Chapter 40C of the General Laws of the Commonwealth of Massachusetts, as amended.

SECTION 2

The purpose of this bylaw is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the Town of Wenham or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.

SECTION 3

There is hereby established under the provisions of Chapter 40C of the General Laws a historic district to be known as the “Wenham Historic District 1972” attached to and made part of this bylaw.

SECTION 4

There is hereby established under Chapter 40C of the General Laws, with all the powers and duties of a historic district commission under such statute a Wenham Historical Commission / Historic District Commission, consisting of seven members to be appointed in accordance with the provisions of such statute; provided, however, that in addition to the organizations which section four of such statute designates, the Wenham Village Improvement Society may submit nominees for membership in the Commission. The initial appointments to membership in the Commission shall be as follows: two members appointed for a term of one year; two members appointed for a term of two years; and three members appointed for a term of three years. Successors shall each be appointed for a term of three years. Vacancies shall be filled by appointment for the unexpired term.

SECTION 5

Notwithstanding anything containing in this bylaw to the contrary, the authority of this commission shall not extend to the review of the following categories of buildings or structures or exterior architectural features in the Wenham Historic District.

- a. Terraces, walks, driveways and similar structures or any one or more of them, provided that any such structure is substantially at grade level.
- b. Storm doors and windows, screens, window air conditioners, lighting fixtures, antennas and similar appurtenances, or any one or more of them.
- c. The color of paint
- d. the color of materials used on roofs
- e. The reconstruction of substantially similar in exterior design of a building, structure or exterior architectural feature damaged or destroyed by fire or storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

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SECTION 6

The commission established hereunder shall have the powers and duties of an historical commission as provided in chapter 40 section eight D of the General Laws of the Commonwealth of Massachusetts and the commission shall be entitled The Wenham Historical Commission / Historic District Commission.

SECTION 7

In case any section, paragraph or part of this bylaw be for any reason declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph or part shall continue in full force and effect.

(Approved at the Annual Town Meeting 4/5/2014 and accepted by the Attorney General 9/11/2014) Effective 9/16/2014 when posted